

Appl. No. 10/722,398
Reply to Office Action of June 3, 2005

Attorney Docket: P69334US0

REMARKS

In this Amendment, Applicant has cancelled Claim 23 without prejudice or disclaimer, and amended Claims 21 and 27. Claims 21 and 27 have been amended to correct certain informalities. It is respectfully submitted that no new matter has been introduced by the amended claims. All claims are now present for examination and favorable reconsideration is respectfully requested in view of the preceding amendments and the following comments.

DRAWING OBJECTION:

The drawings have been objected to under 37 CFR 1.83(a) as allegedly not showing every feature of the invention specified in the claims.

Applicant respectfully submits that the presently amended claims have overcome the objections. More specifically, Claim 23 has been cancelled. Therefore, the objection is moot.

CLAIM OBJECTION:

Claims 21 and 27 have been objected as containing informalities.

Applicant respectfully submits that the presently amended claims have overcome the objections. More specifically, Claim 21 has been amended to specify that "a light source is arranged below, before, or behind the variable background." In addition, Claim 27 has been amended to depend on Claim 11, which provides antecedent basis for "the fastening devices." Furthermore, the term "Velcro" has been amended to capitalized letters.

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Therefore, the objections to the claims have been overcome. Accordingly, withdrawal of the objections is respectfully requested.

REJECTIONS UNDER 35 U.S.C. § 102:

Claims 1, 2, 4 and 6 – 27 have been rejected under 35 U.S.C. § 102 (a) as allegedly being anticipated by Novoflex MagicStudio website. Claims 1, 2, 4 and 6 – 27 have been rejected under 35 U.S.C. § 102 (b) as allegedly being anticipated by Childress et al. (US 5,513,670), hereinafter Childress. Claims 1, 2, 4, 6 – 11, 21, 23, 26 and 27 have been rejected under 35 U.S.C. § 102 (b) as allegedly being anticipated by Mitchell et al. (US 3,789,448), hereinafter Mitchell. Claims 1, 2, 4, 6 – 11, 21, 23, 26 and 27 have been rejected under 35 U.S.C. § 102 (b) as allegedly being anticipated by Saxton et al. (US 6,237,820), hereinafter Saxton.

Applicant traverses the rejection and respectfully submits that the presently claimed invention is not anticipated by the cited reference. More specifically, Applicant respectfully submits that the Novoflex MagicStudio website as cited by the Examiner is the own work of the inventor and the website describes the inventor's own work. A Declaration under 37 CFR §1.132 including the domain name registration information in German and English is hereby submitted for the Examiner's review. Therefore, it is improper for the Examiner to use the Novoflex MagicStudio website as a reference against the present application under 35 U.S.C. §102(a) since such disclosure is the inventor's own work, not the publication of another. The Examiner also indicated the activities that "MagicStudio products are listed in the 2002 price catalogue" and "the MagicStudio product was announced at PHOTOKINA2002." It is respectfully submitted that there is not sufficient evidence to show that these activities did occur. There is no indication of the above activities in the copy of the Novoflex MagicStudio website previously provided by the Examiner. In addition, anticipation rejection based on public knowledge or use should be occurred in this country. There is not sufficient evidence in the record showing that these alleged activities occurred in this country.

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Mitchell (US 3,789,448)

Mitchell discloses a swimming aid that can be attached to the hand or foot. This swimming aid consists of two elastic and resilient plastic discs of different sizes which can be attached to each other by bending them into different angles in such a way that the space occurring between the two sides is of such a dimension so that a hand or a foot can be embraced by it. This swimming aid can be put around the hand, wrist, or foot. As it can be seen in the figures (see in particular Figs. 1 and 3), both plastic discs are perforated in such a way that a different bending is the result if they are fixed to one another on both sides to the holes therein by means of ropes or strings. Here, only the size of the space can be achieved by altering the tension of the rope. Bending into different shapes and the feature of fixing, as it is defined by claim 1 of the present patent application, is not disclosed or possible with the solution of Mitchell. A photographic object to be taken cannot be positioned, either on one of the discs or between the discs, in such a way that it can be photographed with special exposure and/or shades. The complete citation does not contain any suggestion to a skilled artisan which could bring him/her to use this swimming aid, comprising two plastic discs which have only two attachment perforations on each side, as a photographic background. Figs. 1 and 3 of Mitchell show, rather unambiguously, that the purpose of Mitchell is restricted only to a swimming aid.

The problem of the present invention cannot be solved by this construction of Mitchell. An object of the present invention is to provide a solution that provides a background for photographic pictures as flexible as possible which also can be easily transported. The solution of Mitchell is not suited to provide a flexible background for photographic pictures which can be brought into very different shapes by different tensioning and fixing of the fastening means in order to get corresponding photographic effects. In particular, the exposure, color and shade are relevant for a background for photographic pictures. All of these means are provided by the present invention. The solution according to Mitchell cannot solve this problem. Also, other technical means are provided for fastening as shown quite impressively in Figs. 1 to 5b of the present application. Here, the formed shape of the variable background for photographic pictures

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is important which can be brought especially into S-shape, tunnel shape, U-shape, or into the form of a cylinder or cone by means of the fixtures and fastening means. Fixed in this shape, the object which has to be photographed may be arranged, either on top of, or below, or within, the variable background in order to get corresponding photographic effects. All these cannot be effected by Mitchell, as only the arm or foot of a swimmer can be embraced. Only the adaptation to different body diameters of the foot or arm is possible according to Mitchell.

Childress (US 5,513,670)

Childress discloses a sunshade made of flexible material held by a frame. The flexible material is provided with perforations laterally on all sides, through which a rope or rings are drawn by means of which the flexible material is tensioned in the frame. The frame can only be folded at one folding point so that planes occur which can be positioned in different angles to the incidence of sunrays. On one hand, it has to be emphasized that the fastening means itself is not flexible in the sense of the definition of the present invention. Rather, the fastening means has to be seen as a combination of pipe and rope or ring. Furthermore, it is not clear how an object to be photographed should be positioned on this sunshade. First of all, only folding and straightening are possible according to Childress, so that the requirements of a variable background for photographic pictures are not met by Childress. In addition, the technical means for the folding is chosen in another manner, namely a combination between a frame and a fastening means connecting with this frame. The tension of the flexible fastening means cannot be altered, even when it is set. Additionally, cloth material is usually used for the sunshade. This material usually does not have enough stiffness for positioning an object to be photographed on it. Folding can only be carried out in certain raster screens (see also, for example, Figs. 4 and 5), which extremely restricts the possibilities of the different angle adjustments of the two planes to each other. Furthermore, Childress does not disclose anything about the material of the two planes, 14 and 16. In this regard, there is no suggestion to be found here to develop a photographic background which provides a background as flexible as possible for photographic pictures and can be

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transported easily. This cannot be effected by the solution of Childress which has been briefly shown before.

Saxton (US 6,237,820)

Saxton discloses a solution on how to form a sheet of flexible material into a pipe-shaped body. The pipe-shaped body has for that purpose only perforations, respectively punchings, through which strings for fixing can be drawn. Thus, by rolling of the body and the drawing through at least one string, a pipe is created into which, for example, a bottle can be shoved for transport. The side may be made from flexible material, and it is also suggested to use plastic material. However, the fastening means are designed completely different and have a different function. While in the present invention, the punchings serve for grinding, for example, strings or other fastening means through in order to vary the shape of the variable background, in the solution of Saxton, the fastening means is only meant for fixing. Varying of the shape cannot be achieved by, for example, pulling the string. Thus, the strings serve only for fixing the shape once achieved. If, for example, a larger diameter is desired, the string has to be released and drawn through other openings in order to get this diameter. The solution is even restricted only to this modification according to which the plane body can be brought into a corresponding shape. This can be seen clearly in Figs. 1 and 2. In Fig. 2, for example, it is shown that the slab-like body is provided almost completely with perforation openings, respectively perforations. This would be absolutely unsuitable for a photographic background. The variable background of the invention is rather designed that the plane may be flexible, however sufficiently stable, in order to position a body on it which has to be photographed. Furthermore, the flexible background is designed in such a way that certain lightings achieve also different effects.

With a permanent perforation, effects of this kind cannot be achieved. The ray would rather pass through the perforation and thus influence the picture negatively because there is no reflection of the light on the perforation points. The other embodiments only deal with getting other pipe-shaped bodies, into which also container or bottles can be shoved in order to transport them. Furthermore, other solutions are

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shown in order to arrange at least two containers of this kind, one above the other, and to fix them with each other in order to achieve an easy transport. A suggestion on how to achieve a photographic background according to the suggestion of the present invention by means of this solution cannot be found in this reference. Besides the perforations, a string as a fastening means and flexible material, no other hints are mentioned how to create a suitable solution in such a way that an absolutely universal, flexible background for photographic pictures of objects which have to be photographed is designed. In this regard, Saxton fails to disclose the design to solve the problem of the present invention.

Therefore, the newly presented claims are not anticipated by the Novoflex MagicStudio website, Childress, Mitchell or Saxton and the rejection under 35 U.S.C. § 102 has been overcome. Accordingly, withdrawal of the rejection under 35 U.S.C. § 102 is respectfully requested.

Having overcome all outstanding grounds of objections, the application is now in condition for allowance, and prompt action toward that end is respectfully solicited.

Respectfully submitted,

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Enclosures:

A Declaration under 37 CFR §1.132 including the domain name registration information in German and English